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Part 1

ILSA EXTENSION ACT OF 2001

JUNE 22, 2001.—Ordered to be printed

Mr. HYDE, from the Committee on International Relations, submitted the following

R E P O R T

[To accompany H.R. 1954]

[Including cost estimate of the Congressional Budget Office]

The Committee on International Relations, to whom was referred the bill (H.R. 1954) to extend the authorities of the Iran and Libya Sanctions Act of 1996 until 2006, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "ILSA Extension Act of 2001".

89–006

SEC. 2. IMPOSITION OF SANCTIONS WITH RESPECT TO LIBYA.

(a) IN GENERAL.—Section 5(b)(2) of the Iran and Libya Sanctions Act of 1996 (50 U.S.C. 1701 note; 110 Stat. 1543) is amended by striking "$40,000,000" each place it appears and inserting "$20,000,000".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to investments made on or after June 13, 2001.

SEC. 3. EXTENSION OF IRAN AND LIBYA SANCTIONS ACT OF 1996.

Section 13(b) of the Iran and Libya Sanctions Act of 1996 (50 U.S.C. 1701 note; Public Law 104–172) is amended by striking "5 years" and inserting "10 years".

SEC. 4. REVISED DEFINITION OF INVESTMENT.

Section 14(9) of the Iran and Libya Sanctions Act of 1996 (50 U.S.C. 1701 note; 110 Stat. 1549) is amended by adding at the end the following new sentence: "For purposes of this paragraph, an amendment or other modification that is made, on or after June 13, 2001, to an agreement or contract shall be treated as the entry of an agreement or contract.".

BACKGROUND AND PURPOSE

The Iran-Libya Sanctions Act (PL 104–172) imposes sanctions on persons or entities investing in the Iranian or Libyan energy sector above the threshold of $20 million and $40 million respectively in a given year. The President has the option of two out of a menu of seven sanctions, and there is a national security clause that allows the President to waive all sanctions.

The ILSA Extension Act of 2001 extends the act for an additional 5 years, lowers the threshold for foreign investment in the Libyan energy sector from $40 million to $20 million, the same threshold for Iranian investment, and mandates that "an amendment or other modification" to pre-ILSA contracts in Libya be considered as new investment and therefore subject to scrutiny under ILSA.

ILSA AND ITS ORIGINS

The Iran-Libya Sanctions Act (ILSA, P.L. 104–172) is set to expire on August 5, 2001, 5 years after enactment. ILSA was designed to deter foreign investment in Iran's energy sector in response to Iran's weapons-of-mass-destruction programs, its support of Islamist terrorist organizations, such as Hezbollah, Hamas, and Palestine Islamic Jihad, and Iran's possible role in the Khobar Towers bombing in 1996 of U.S. troops in Saudi Arabia. ILSA had been preceded by presidential executive orders banning all U.S. trade and investment with Iran in 1995, including Conoco's agreement to invest in the Iranian oil sector.

Iran had begun to consider foreign investment in its energy sector in the mid-1990's for the first time since the fall of the Shah in response to declining energy revenues. Oil revenues account for almost half of Iran's GDP, and Iran's oil fields, as well as its oil industry infrastructure, are old and need substantial modernization and investment. Its large natural gas resources, believed to be second largest in the world, after Russia's, are hardly developed at all.

Former Senator D'Amato introduced the first version of what later became ILSA—the "Iran Foreign Oil Sanctions Act of 1995," which imposed sanctions on the export to Iran, by foreign companies, of sophisticated energy industry technology. The bill passed the Senate in December, 1995 (by voice vote) as the "Iran Oil Sanctions Act of 1995" which, in contrast to the introduced version, imposed sanctions on foreign investment in Iran's energy sector. This change of approach also took into account concerns that U.S. monitoring of foreign exports to Iran would be difficult to implement. As passed in the Senate, the bill also included identical sanctions on Libya.

The legislation that was ultimately passed and became law, H.R. 3107, was passed by the House on June 19, 1996 by a vote of 415–0. The Senate passed a slightly different version on July 16, 1996 by unanimous consent. The House agreed to the Senate amendment and the President signed the bill into law (P.L. 104–172) on August 5, 1996.

ILSA PROVISIONS

ILSA currently requires the President, subject to the possibility of waiver, to impose at least two out of a menu of seven sanctions on foreign companies that make an "investment" of more than $20 million in 1 year in Iran's energy sector, or $40 million in 1 year in Libya's energy sector. The sanction with the strongest impact would prevent U.S. imports of goods from an offending company. The seven sanctions provided for in ILSA (Section 6) are the following:

- Denial of Export-Import Bank loans, credits, or credit guarantees for U.S. exports to the sanctioned firm.
- Denial of licenses for the export to the U.S. of military or militarily-useful technology to the sanctioned firm.
- Denial of U.S. bank loans exceeding $10 million in 1 year to the sanctioned firm.
- If the sanctioned firm is a financial institution, a prohibition on that firm's service as a primary dealer in U.S. government bonds; and/or a prohibition on that firm's service as a repository for U.S. government funds. (Each counts as one sanction.)
- Prohibition on U.S. government procurement from the sanctioned firm.
- A restriction on imports from the sanctioned firm, in accordance with the International Economic Powers Act (50 U.S.C. 1701 and following).

WAIVER AND EXPIRATION PROVISIONS

There are two grounds on which the President may waive ILSA sanctions. Under Section 4(c) of ILSA, the President may waive sanctions for investment in Iran if the parent country of the violating firm agrees to impose economic sanctions on Iran. This waiver provision does not apply to Libya. Under Section 9(c) of the law, the President may waive sanctions on the grounds that doing so is important to the U.S. national interest. This waiver applies to Iran and Libya.

ILSA provides for benchmarks under which the sanctions provisions would no longer apply. For Iran, the sanctions end if Iran ceases its efforts to acquire WMD and is removed from the U.S. list of state sponsors of terrorism. For Libya, the sanctions end if the President determines that Libya has fulfilled the requirements of all U.N. resolutions relating to the attack on Pan Am 103.

ILSA IMPLEMENTATION

None of the ILSA sanctions have been applied against foreign entities, largely because of strong opposition from the European Union. The European Union strongly opposes ILSA on the ground that it is an extraterritorial application of U.S. law. It has threatened taking the issue to the World Trade Organization, and adopted measures forbidding EU firms to cooperate in implementing the law.

In 1998, President Clinton waived on national security grounds ILSA sanctions against the first foreign investment consortium, involving Total SA of France (now Totalfina ELF) and its minority partners, Gazprom of Russia and Petronas of Malaysia, which had won an award of a $2 billion contract to develop the large South Pars off-shore gas field. (Iran is less sensitive about off-shore than on-shore foreign investment.) Gazprom would have been the only firm that could have been immediately affected by ILSA legislation since it had access to Eximbank credits; the other two firms did not have financial interests in the United States that would have been effected.

In return for the waiver, the EU and Russia promised greater cooperation on counter-terrorism and limiting the transfer of technology to Iran.

Since then, a number of other foreign firms have decided to enter the Iranian energy sector. In 1999, France's Elf Aquitaine (now merged with Totalfina) and Italy ENI were awarded a $1 billion deal, Elf and a Canadian firm, Bow Valley, a $300 million project, and Royal Dutch/Shell a $800 million project. The Clinton Administration placed these projects under review for ILSA, but did not decide whether to impose sanctions. These projects have recently begun their implementation phases.

President Bush said on April 20 said that he has no immediate plans to end sanctions on Iran or Libya. The President said that Libya must pay compensation and acknowledge responsibility for the destruction of Pan AM 103. The remarks were in response to questions about an energy task force headed by Vice President Cheney, which is examining the sanctions issue in the context of U.S. energy supplies.

ARGUMENTS IN FAVOR OF ILSA RENEWAL

Supporters of ILSA renewal make the argument that ILSA has succeeded in deterring Japanese investment, and has probably deterred some European investors from investing in the energy sector. By limiting the numbers of foreign investors, ILSA has reduced Iranian revenues since there are fewer foreign companies that can be pitted against each other to increase revenues in the bidding process. Supporters also believe that ILSA strengthens the case for existing prohibitions against U.S. investment in the Iranian energy sector.

Supporters of ILSA also point out that Iran has not changed those policies that the United States finds objectionable, despite the election of President Khatemi and large numbers of pragmatists to the Iranian parliament. According to unclassified studies by the Central Intelligence Agency, Iran continues its weapons-of-mass destruction programs, including nuclear, chemical, and biological, and the missiles to deliver them. Iran already has manufactured and stockpiled several thousand tons of chemical weapons. Tehran is expanding its efforts to seek dual-use biotechnical materials, equipment, and expertise from abroad. Iran is cooperating broadly with Russia on its nuclear program. A number of foreign entities continue to supply numerous components for Iran's missile program.

Iran has increased its support to Islamic radical movements that carry out operations against Israel. Iran supports these groups with varying amounts of money, training, and weapons. These groups have carried out terrorist attacks against Israeli civilians inside Israel.

Supporters also believe that not renewing ILSA would indicate that the United States is less concerned with the offensive Iranian behavior.

Supporters apply similar arguments to the case of Libya. In particular, they point to insufficient change in Libyan behavior. Libya handed over two Pan Am 103 suspects in April 1999, triggering a suspension of U.N. sanctions, and one of these suspects, who is closely linked to the Libyan government, was convicted of the bombing in January 2000. Nevertheless, Libya still refuses to acknowledge culpability for the bombing or to compensate the families of the victims. As is the case regarding Iran, supporters believe that ending or easing application of ILSA sanctions on Libya would suggest a weakening of U.S. resolve.

HEARINGS

The Committee's Subcommittee on the Middle East and South Asia hosted a classified briefing for Committee Members held by staff of the Central Intelligence Agency on Wednesday, May 9, 2001. Members of the Committee were briefed on the Iranian program to develop weapons of mass destruction and Iran's support of terrorism. On May 9, 2001, the Subcommittee on the Middle East and South Asia held a hearing on issues related to the Iran-Libya Sanctions Act. Testimony was received from: Former U.S. Senator Alfonse D'Amato (via video conference); Dr. Patrick Clawson, Director for Research, The Washington Institute for Near East Policy; Mr. Howard A. Kohr, Executive Director, American Israel Public Affairs Committee; and the Honorable William A. Reinsch, President, National Foreign Trade Council, Inc. In addition, Deputy Assistant Secretary of State for Energy, Sanctions, and Commodities, Anna Borg, expressed the Administration's position during the Committee's markup of H.R. 1954.

COMMITTEE CONSIDERATION

On June 13, 2001, the International Relations Committee marked up the bill, H.R. 1954, pursuant to notice, in open session. The Committee agreed by voice vote to an amendment offered by Mr. Lantos which makes two changes to the Iran-Libya Sanctions Act (P.L. 104–172). First, it lowers the dollar threshold (from $40 to $20 million) that triggers sanctions against foreign companies that make oil investments in Libya, making it consistent with the threshold that applies to Iran. Second, the amendment clarifies that an amendment or modification to a contract that existed prior to the enactment of the Iran-Libya Sanctions Act shall be treated as a new contract for purposes of evaluating whether such amendment or modification triggers the sanctions provided under the act. The Committee has received a number of reports that companies operating in Iran and Libya under contracts entered into prior to the enactment of ILSA (activities that were "grandfathered" by the act) are amending or modifying contracts rather than entering into new contracts in order to avoid ILSA sanctions. This amendment addresses these attempted circumventions of the act. The Committee recessed subject to the call of the Chair on June 13 without completing consideration of the bill.

The markup continued on June 20, 2001. Mr. Paul offered an amendment to extend the act for 2 years instead of 5. The amendment was defeated by a record vote of 9 ayes to 34 noes. A motion offered by Chairman Hyde to favorably report H.R. 1954 to the House of Representatives, as amended, was agreed to by a record vote of 41 ayes to 3 noes, a quorum being present.

VOTES OF THE COMMITTEE

Clause (3)(b) of rule XIII of the Rules of the House of Representatives requires that the results of each record vote on an amendment or motion to report, together with the names of those voting for or against, be printed in the Committee report.

DESCRIPTION OF AMENDMENT, MOTION, ORDER, OR OTHER PROPOSITION:

Vote 1 (11:35 a.m.): Paul Amendment to extend the act until 2003 instead of 2006.

Voting yes: Bereuter, Rohrabacher, Houghton, Cooksey, Paul, Nick Smith, Flake, Hilliard, and Blumenauer.

Voting no: Gilman, Leach, Chris Smith, Burton, Gallegly, Ros-Lehtinen, Ballenger, King, Chabot, Burr, Tancredo, Pitts, Issa, Cantor, Kerns, Jo Ann Davis, Lantos, Berman, Ackerman, Faleomavaega, Payne, Menendez, Wexler, Jim Davis, Engel, Meeks, Lee, Crowley, Hoeffel, Berkley, Napolitano, Schiff, Watson and Hyde.

Ayes 9. Noes 34.

Vote 2 (11:39 a.m.): Hyde motion to favorably report to the House of Representatives H.R. 1954, as amended.

Voting yes: Gilman, Leach, Bereuter, Chris Smith, Burton, Gallegly, Ros-Lehtinen, Ballenger, Rohrabacher, King, Chabot, McHugh, Burr, Cooksey, Tancredo, Nick Smith, Pitts, Issa, Cantor, Flake, Kerns, Jo Ann Davis, Lantos, Ackerman, Faleomavaega, Payne, Menendez, Sherman, Wexler, Jim Davis, Engel, Meeks, Lee, Crowley, Hoeffel, Blumenauer, Berkley, Napolitano, Schiff, Watson, and Hyde.

Voting no: Houghton, Paul, and Hilliard.

Ayes 41. Noes 3.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1954, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 21, 2001.

Hon. HENRY J. HYDE, *Chairman,*
Committee on International Relations,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1954, the ILSA Extension Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Joseph C. Whitehill (for federal costs), who can be reached at 226–2840, and Paige Piper/Bach (for the private-sector impact), who can be reached at 226–2940.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable Tom Lantos
Ranking Democratic Member

H.R. 1954—ILSA Extension Act of 2001.

H.R. 1954 would extend the authorities of the Iran and Libya Sanctions Act (ILSA) of 1996 for an additional five years through 2006. The bill would lower the threshold of investments in Libya that could trigger sanctions under the act from $40 million to $20 million, and it would revise the definition of investment to include any amendment or modification of existing contracts that would exceed the threshold amount. CBO estimates that implementing H.R. 1954 would not significantly affect discretionary spending. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

Based on information from the Department of State, CBO estimates that H.R. 1954 would result in a substantial increase in the number of investments in Libya that could be subject to the sanctions in ILSA. CBO estimates that the additional workload necessary to identify such investments would increase the department's spending by less than $500,000 annually, assuming the availability of appropriated funds.

H.R. 1954 could impose a private-sector mandate as defined by the Unfunded Mandates Reform Act (UMRA). The President would be required to impose certain sanctions on U.S. entities or foreign companies that have invested more than a specified amount of money ($20 million for Libya, $40 million for Iran) in developing the petroleum and natural gas resources of Libya or Iran. Among the sanctions available under the bill, the President could impose certain restrictions on U.S. offices of a sanctioned company or on entities and financial institutions engaged in business transactions with a sanctioned entity. The bill would, however, allow the President the discretion to make exceptions in applying such sanctions. Since passage of the Iran and Libya Sanctions Act of 1996, no such sanctions have been imposed. Consequently, CBO expects that sanctions are unlikely to be imposed under this act and that the direct cost of the mandate would fall below the annual threshold established by UMRA for private-sector mandates ($113 million in 2001, adjusted annually for inflation).

H.R. 1954 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for federal costs is Joseph C. Whitehill, who can be reached at 226–2840. The CBO staff contact for private-sector mandates is Paige Piper/Bach, who can be reached at 226–2940. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

Performance Goals and Objectives

ILSA is intended to change Iranian and Libyan behavior by making more costly foreign investors' access to their energy resources. It was the intent of this bill that Iran and Libya would change their objectionable behavior or face the prospect of less foreign investment.

Constitutional Authority Statement

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 3, and article I, section 8, clause 18 of the Constitution.

Section-by-Section Analysis and Discussion

The Iran Libya Sanctions Act of 1996 (50 U.S.C. 1701 note: Public Law 104–172) is modified in the following ways:

Section 1 is the short title of the bill.

Section 2 amends the Iran and Libya Sanctions Act by lowering the threshold that would trigger sanctions on foreign investment in Libya's energy sector from $40 million to $20 million—the same as Iran. It specifically amends section 5(b) (2) by striking "$40,000,000 each of the two places it appears and inserting $20,000.000".

Section 3 amends Section 13(b) of the Iran and Libya Sanctions Act of 1996 is by striking "5 years" and inserting "10 years." This section extends the sanctions for an additional 5 years.

Section 4 provides a revised definition of investment, specifically by amending section 14(9), mandates that "an amendment or other modification" to pre-ILSA contracts in Libya be considered as new investment and therefore liable to scrutiny under ILSA. This was done to prevent foreign companies from avoiding scrutiny by claiming that new operations adjacent to old oil fields are part of the pre-ILSA contracts, and not covered by ILSA.

NEW ADVISORY COMMITTEES

H.R. 1954 does not establish or authorize any new advisory committees.

CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 1954 does not apply to the legislative branch.

FEDERAL MANDATES

H.R. 1954 provides no Federal mandates.